

APPEAL NO. 041225
FILED JUNE 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142 provides that an employee is entitled to SIBs if on the expiration of the impairment income benefit period the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. Both requirements must be met in order to be eligible for SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)), relied on by the claimant in this case for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period."

The hearing officer determined that although the claimant established that she met the good faith requirement of Section 408.142, she failed to establish that her underemployment during the relevant qualifying period was a direct result of her impairment due to the compensable injury. The claimant offered no medical evidence into the record to establish what her medical condition was during the qualifying period in question. Other than the claimant's testimony that she was restricted from lifting over 30 pounds, there were no medical reports submitted to establish what the claimant's actual restrictions were. Very little evidence was offered regarding what the physical demands of the claimant's preinjury job were. The direct result issue presented a question of fact for the hearing officer to resolve. Upon review of the record before us, we find that the hearing officer's determination that the claimant failed to establish that her underemployment during the relevant qualifying period was a direct result of her impairment and that she is, therefore, not entitled to SIBs for the sixth quarter is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
300 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge